

# Gun Control: Silencers under the Hearing Protection Act (H.R. 3668)

October 16, 2017

Firearm silencers are currently regulated under the [1934 National Firearms Act \(NFA\)](#) and the [Gun Control Act of 1968 \(GCA\)](#). Both statutes use the definition of a silencer/muffler included in the GCA. The Department of Justice’s Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) is the lead federal agency that administers those statutes.

The Hearing Protection Act (HPA) would remove firearm silencers from regulation under the NFA. Silencers would continue to be regulated under the GCA in a manner similar to the way long guns (rifles and shotguns) are regulated under this law. On September 18, 2017, the House Committee on Natural Resources reported the HPA as part of the Sportsmen’s Heritage and Recreational Enhancement Act (H.R. 3668). This bill was referred to other committees, but they were discharged from further consideration. (See also [H.R. 367](#), [S. 59](#), and [H.R. 3139](#).)

## Firearm Silencer or Muffler Definition

Under the GCA, the terms “[firearm silencer](#)” and “[firearm muffler](#)” mean

any device for silencing, muffling, or diminishing the report of a portable firearm, including any combination of parts, designed or redesigned, and intended for use in assembling or fabricating a firearm silencer or firearm muffler, and any part intended only for use in such assembly or fabrication.

Firearm silencers and mufflers are also commonly known as “suppressors.”

## Firearm Definition Includes Any Muffler or Silencer

Under the GCA, the term “[firearm](#)” means:

- (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive;
- (B) the frame or receiver of any such weapon;
- (C) any *firearm muffler* or *firearm silencer*; or

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(D) any destructive device.

## GCA Regulation of Firearms and Silencers

The GCA includes the principal federal restrictions on domestic commerce in firearms, including firearm silencers. The statute:

- requires all persons manufacturing, importing, or selling firearms as a business to be federally licensed;
- prohibits interstate firearms transfers between unlicensed persons;
- prohibits interstate sale of handguns generally;
- sets forth categories of persons prohibited from receiving or possessing firearms and to whom firearms may not be transferred;
- authorizes the Attorney General to prohibit the importation of non-sporting firearms;
- requires that dealers maintain records of all commercial gun sales; and
- imposes heightened penalties for firearm use in a federal drug trafficking offense or violent crime.

Any unlicensed person seeking to acquire any firearm from a federal firearms licensee (FFL) must undergo a name-based background check through the National Instant Criminal Background Checks System (NICS). An FFL may proceed with the firearms transfer at his discretion if those checks are not completed within three business days.

The GCA generally prohibits the importation of NFA firearms, including silencers.

## NFA Regulation of Silencers

The NFA regulates silencers, machineguns, short-barreled shotguns and rifles, destructive devices (e.g., grenades), and certain concealable firearms under the term “any other weapon” (e.g., pen, cane, and belt buckle guns). As part of the Internal Revenue Code, the NFA taxes all aspects of the manufacture and distribution of such weapons and compels the disclosure of the production and distribution system from manufacturer to buyer. To deal in NFA firearms, an individual is required to be an FFL under the GCA and a special occupational taxpayer (SOT) under the NFA. The NFA imposes a \$200 making tax on unlicensed persons and a \$200 transfer tax for transfers to unlicensed persons. ATF places a tax stamp on a transfer document upon the transfer’s approval, and the transferee may not take possession of the firearm until he holds that document. Under the NFA, individuals must undergo a fingerprint-based criminal history background check, which is arguably more thorough than a name-based check. There is no deadline for the completion of such checks. It is a felony to receive, possess, or transfer an unregistered NFA weapon. Such offenses are punishable by up to [10 years imprisonment](#). In April 2017, there were [1,360,023 silencers](#) registered to FFL/SOTs, law enforcement, and unlicensed individuals in the ATF-maintained National Firearms Registration and Transfer Record (NFRTR).

## HPA Provisions

By removing silencers from coverage under the NFA, H.R. 3668 would regulate them entirely under the GCA in a manner parallel to long guns. It would preempt any state or local government from imposing a “tax, other than a generally applicable sales or use tax, on making, transferring, using, possessing, or transporting a firearms silencer,” as well as any marking or recordkeeping requirements. It would also require ATF to destroy all records on silencers in its NFRTR.

The bill would redefine the terms “firearm silencer” and “firearm muffler” as follows:

(A) The terms “firearm silencer” and “firearm muffler” mean any device for silencing, muffling, or diminishing the report of a portable firearm, including the “keystone part” of such a device.

(B) The term “keystone part” means, with respect to a firearm silencer or firearm muffler, an externally visible part of a firearm silencer or firearm muffler, without which a device capable of silencing, muffling, or diminishing the report of a portable firearm cannot be assembled, but the term does not include any interchangeable parts designed to mount a firearm silencer or firearm muffler to a portable firearm.

H.R. 3668 would require that FFL manufacturers and importers identify silencers by a serial number. It would levy a 10% excise tax on the making or importing of silencers.

## State Laws on Silencers

Eight states and the District of Columbia ban silencers for civilian ownership. Those states are California, Delaware, Hawaii, Illinois, Massachusetts, New Jersey, New York, and Rhode Island. H.R. 3668’s preemption provision would not cover those state prohibitions. In [42 states](#), state law does not prohibit ownership of firearm silencers, and an unlicensed individual may acquire a firearm silencer under federal law. In [40 of those 42 states](#), it is legal to hunt with firearms equipped with such silencers, according to the American Suppressor Association.

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